

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**JOHN M GORDON**  
Claimant

**APPEAL NO. 07A-UI-01505-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PARISIAN VIRGINIA**  
Employer

**OC: 01/14/07 R: 02  
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge for Misconduct  
Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Parisian Virginia filed an appeal from a representative's decision dated February 2, 2007, reference 01, which held that no disqualification would be imposed regarding John Gordon's separation from employment. After due notice was issued, a hearing was held by telephone on February 27, 2007. Mr. Gordon participated personally. The employer participated by Maureen Jansen, Human Resources Manager. Exhibits One through Five were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. Gordon was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Gordon was employed by Parisian Virginia, doing business as Younkers, from July 26, 2004 until January 12, 2007 as a full-time merchandiser working on the dock. He was discharged for using profanity towards his supervisor on January 4, 2007.

On the morning of January 4, Mr. Gordon's supervisor, Joel Mangold, questioned him as to whether he and his coworker had completed unloading a trailer the previous evening. Mr. Gordon indicated they had not and that his coworker had been of little assistance. Mr. Mangold then met with Mr. Gordon and three others to review his expectations when trailers were unloaded. He asked Mr. Gordon why rollers were placed back on the trailer and Mr. Gordon responded by saying "fuck you." Mr. Mangold told him to watch his language and Mr. Gordon repeated, "fuck you." He was then directed to leave the dock. He was suspended that day and notified of his discharge on January 12, 2007. The above incident was the sole reason for the discharge.

Mr. Gordon filed a claim for job insurance benefits effective January 14, 2007. He has received a total of \$446.00 in benefits since filing his claim.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Gordon was discharged for directing profanity towards his supervisor. He twice said "fuck you" to the supervisor. He was given the opportunity to retreat from the situation when Mr. Mangold told him to watch his language after he first made the comment. Instead, Mr. Gordon escalated the matter by again making the comment. The profanity was used in the presence of other individuals subordinate to Mr. Mangold. As such, the conduct had the potential of undermining his supervisory authority.

The administrative law judge concludes that Mr. Gordon's conduct of January 4 is sufficient to establish a substantial disregard of the standards of behavior the employer had the right to expect. Therefore, misconduct has been established and benefits are denied. Mr. Gordon has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

**DECISION:**

The representative's decision dated February 2, 2007, reference 01, is hereby reversed. Mr. Gordon was discharged for disqualifying misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Gordon has been overpaid \$446.00 in job insurance benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw